IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-796

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, et al., *Petitioners*

v.

CEDAR COAL COMPANY AND SOUTHERN OHIO COAL COMPANY, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

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BRIEF AMICUS CURIAE OF THE BITUMINOUS COAL OPERATORS', INC.

BCOA'S INTEREST

Permission of all parties has been obtained to the filing of the Brief. Copies of letters attached.

The Bituminous Coal Operators' Association, Inc., herein called "BCOA", is a national association of coal operators, organized in 1950 for the purpose of negotiating and assisting in interpreting BCOA's na-

tional agreements with the United Mine Workers of America, herein called "UMWA". BCOA has approximately 50 members who operate in all of the bituminous coal mining states and who collectively produce approximately 75 percent of the bituminous coal mined under the National Bituminous Coal Wage Agreement of 1974, herein called the "1974 Agreement".

BCOA was formed in 1950 against the backdrop of the labor strife in the coal industry during the 1940's, a period characterized by strikes and Government seizures of the coal mines. BCOA's purpose was to create more stable labor relations and to establish and maintain harmonious relationships between the coal operators and their employees and their employee representative, the UMWA. These efforts were successful for a period of time in that since the early 1950's, a succession of national labor agreements have been negotiated between BCOA and the UMWA without any seriously prolonged or crippling economic strikes. However, during recent years, particularly from 1974 to the present, escalating wildcat strikes have created labor chaos in the coal industry.

The latest contract renewal was the 1974 Agreement which became effective in December 1974 to run for a three-year period. The 1974 Agreement has now expired, and the parties are engaged in negotiating a new agreement. The 1974 Agreement was hailed as one of the most progressive labor agreements ever negotiated. It provided for wage and benefit levels which were at least as beneficial to the miners as those in any other industry. It alsc contained provisions for the handling of grievances and for various types of expedited arbitration over a broad range of issues. All local grievances, disputes or local trouble of any kind were subject to final and binding settlement through the grievance-arbitration procedures of the Agreement. There is no labor agreement of record that contains any broader grievance-arbitration clause.

The provisions for grievance handling and arbitration in the 1974 Agreement were not moribund. They were alive and functioning. Between September 1975 and August 1976, over 2,000 grievances had been submitted to arbitration under the 1974 Agreement. This is in contrast to earlier years when about 600 to 700 grievances were arbitrated each year. The grievance-arbitration procedures were equitable and readily available to the miners, and they were being used by the vast majority of the coal miners. One new feature of the arbitration process added in 1974 was the provision for a National Arbitration Review Board established for the purpose of reconciling conflicts in panel arbitrators' decisions and for bringing about uniformity in the interpretation of the National Agreement.

But, unfortunately, there are coal miners who from time to time take the law into their own hands and engage in and foster wildcat strikes over an arbitrable local grievance or dispute. These local strikes are becoming more frequent and escalating into widespread national wildcat strikes. Such escalation is normally accomplished by roving "stranger" pickets, and these sporadic wildcat strikes sometimes involve 50 percent or more of the UMWA miners.

Despite the bright promise of the 1974 Agreement, labor stability in the coal industry has steadily worsened since that Agreement was signed. There were

more wildcat strikes in the bituminous coal industry in 1975 than ever before, and 1976 was even worse. There was also a long and even more destructive wildcat strike in 1977 lasting about 8 weeks. The losses due to this 1977 wildcat strike were staggering. For BCOA members alone, about one and a quarter million man days were lost. The tonnage loss was over 11 million tons; payroll losses to miners were almost 78 million dollars; and the losses of employer contributions to the Pension and Health Funds were about 25 million dollars. The ability of the bituminous coal industry to meet the nation's increasing fuel requirements was, and continues to be, placed in jeopardy.

The wildcat strike that gave rise to this litigation in the Fourth Circuit and other Circuits took place in 1976, and lasted about 6 weeks, engulfing all or part of the major coal producing states. It is estimated that about 125,000 coal miners were idled by this wildcat strike which started at a single mine of Cedar Coal Company in West Virginia, arising out of a single dispute over the proper classification of one small job.

This local dispute was over a clearly arbitrable issue, and was in fact arbitrated. Yet it was the precipitating cause of the shutdown of about two-thirds of the total national production of bituminous coal. It inflicted severe losses on the coal miners, the coal industry, the Benefit and Pension Funds, the coal communities, the coal states, and the Nation.

Apart from the other astronomical economic losses arising from these wildcat strikes, they pose an imminent threat to the pension and health benefits of the active miners and the 80,000 pensioners.

In the 1974 Agreement, the mine operators agreed to double their contributions to these Trust Funds and to dramatically increase the pensions both for present pensioners and for the future pensions of active miners. The health and medical benefits plans in the bituminous coal industry are among the most liberal in the Nation.

But, the contributions to these Trust Funds by employers are based on a combination of tons of production and cents per hour for hours actually worked. Consequently, their financial stability has been threatened by the rising level of wildcat strikes to the point where the Pension and Health Trusts have been all but destroyed. Only the 1974 Pension Trust is in a viable position. The Board of Trustees, the Chairman of which is appointed by the UMWA, has issued public statements giving warning of the damage to the Trust Funds arising from the recurring incidence of wildcats. But these warnings have been repeatedly ignored while the wildcatting continues to run rampant, depleting and destroying the Pension and Health Benefit Funds. This kind of self-destructive anarchy in the Union must somehow be curbed.

BCOA and its members have a grave and continuing interest in preserving the integrity of the periodic agreements negotiated with the UMWA.

BCOA and its members also have a grave and continuing interest in preserving the grievance-arbitration procedures of those agreements and in maintaining employment stability and production in the bituminous coal industry. BCOA and its members have a similar direct interest in the stability of the Pension and Benefit Trusts. BCOA believes that these interests should be shared by the UMWA and its members and constituent

bodies throughout the industry; and finally, the threat which wildcat strikes present to these interests should be the concern of the public as well.

Recurring and escalating wildcat strikes, to our knowledge, are rare in other industries, but are a serious and mounting threat to the stability of the coal industry.

BCOA is dedicated to encouraging the use of the grievance-arbitration procedures of the Agreements to settle disputes, and generally these procedures were being used. BCOA knows of no instance where a mine operator has failed or refused to arbitrate a local dispute of any kind. The problem of the wildcat strike arises where a few strong-willed men, for reasons known only to them, flaunt these procedures, and engage in spreading wildcat strikes.

These wildcat strikes are usually spread by roving, or "stranger", pickets. In the normal case, as is true here, these "stranger" pickets conceal their identities. They are aided in their destructive conspiracy by the tradition of UMWA members to cease work whenever a picket or pickets appear at their mines, regardless of from whence they come, their identities, or the equity or lack thereof of their cause. Thus is the stage set for a handful of men to create havoc and industrial anarchy in the bituminous coal industry.

BCOA does not believe in or advocate the settlement of labor disputes in the courts. BCOA encourages the settlement of disputes by the grievance-arbitration procedures of the agreement. BCOA is aware that some miners in West Virginia have attacked the courts and have attacked the industry for taking court action against wildcat strikes. BCOA can only say that these

attacks are unwarranted and based on distorted reasoning. In the bituminous coal industry, until the coal miners accept it, the grievance-arbitration system, as experience has shown, will not work without the aid of the courts. BCOA members have only gone to the courts in order to attempt to channel arbitrable issues away from the picket line and into the peaceful procedures which were mutually agreed upon between BCOA and the UMWA. Recourse to the courts to preserve the integrity of the agreement has always been a last resort. But it is at times a necessary one. Without the courts, resort to arbitration will be voluntary, although written as mandatory; and wildcat strikes will go unchecked until they destroy any value of the national agreements, which all parties have pledged themselves to uphold, and until they undermine the stability of employment and production in the bituminous coal industry.

Because of its direct and overriding interest in improving labor relations, promoting labor peace, insuring stability of employment, and encouraging respect for the agreement, BCOA files this brief to respectfully bring to the attention of this Court the scope and seriousness of the issues which are here brought before it.

Without intent to overstate, BCOA believes that the future stability of labor relations and employment in the bituminous coal industry, the future of the United Mine Workers, and the future of the concept of a national labor agreement, will, to a large extent, depend upon the ultimate resolution of the issues here presented.

The Nature of Wildcat Strikes in the Coal Industry

Wildcat strikes, as did this one, typically start with a strike at a mine over some grievance or dispute which

is clearly arbitrable under the national agreement. The local union, or a union member, chooses not to arbitrate and goes on strike. One or more men walk out and the others blindly follow. The mine is then on strike. Unless the strike is spread by roving pickets, the single mine strike normally lasts a day or two and the men return to work. Several wildcat strikes like these occur without fail nearly every day.

The second phase of a typical wildcat strike occurs when the strikers at the originating mine fan out and picket out other mines. They do not necessarily picket openly, but often covertly. The pickets do not carry signs or openly proclaim their cause. They do not picket in the customary sense. They come to a mine in roving caravans, shut it down, and move on to another mine, returning later, if necessary, to shut it down again. Their tactics are successful largely because of the miners' tradition of ceasing work when a "picket" appears at their mines. Fear also plays its part. It is common practice for the miners at a mine closed by roving pickets to in turn picket out neighboring mines so that there is a growing momentum and a snowballing effect. This explains why in the work stoppage giving rise to this case (August 1976) fewer than 200 miners at one mine of Cedar Coal Company in Boone County, West Virginia, and a few other "right to strike" leaders in that UMWA District, did, within a few days, cause the shutdown of most of the bituminous coal mines in the seven bituminous coal producing states and idled about 125,000 miners.

We now turn to a discussion of the case presently before this Court.

QUESTION PRESENTED

BCOA adopts the statement of the question presented by Respondents in their response to the Petition for a Writ of Certiorari.

Perhaps more simply stated the question is:

> Whether a wildcat strike in the bituminous coal industry—precipitated over an arbitrable issue—is enjoinable against all local unions participating in the strike where all local unions and their members have a direct interest in the underlying arbitrable dispute by reason of the existence of a single multi-employer unit and a multi-employer agreement containing terms and provisions common to all, one of which provisions is for the processing and eventual arbitration of labor disputes, through panel arbitration, up to a national Arbitration Review Board.

STATEMENT OF THE CASE

The present Fourth Circuit case involved three consolidated proceedings, which in tandem present the three stages of a typical wildcat strike in the coal industry.

The wildcat strike started at Grace Mine No. 3 of Cedar Coal Company in protest against an arbitrator's decision which the local Union had won in large part. The date was June 22, 1976, and the local was Local 1759. Cedar Coal employees at two other mines owned by Cedar represented by Local 1766 also went on strike over the "dispute".

As already stated, roving pickets spread this strike from there throughout the coal industry, shutting most of it down for several weeks. One of the many mines

which was shut down by the roving pickets was the Martinka Mine of Southern Ohio Coal Company, located in Marion County, West Virginia. The work stoppage at the Martinka Mine started on July 26, and was caused by twelve to fifteen roving pickets who passed out handbills referring to the Cedar Coal dispute and condemning the Federal Courts. The miners at the Martinka Mine refused to work and joined the strike.

Both Cedar Coal Company and Southern Ohio Coal Company appealed to the Federal District Courts for injunctive relief under *Boys Markets,* 398 U.S. 235 (1970), with only very limited success. A District Judge granted a temporary restraining order against Local 1759, but it was ignored and not enforced. A District Judge denied a request for a temporary restraining order against Cedar Local 1766, primarily on the ground that the strike was a "sympathy" strike under *Buffalo Forge,* 428 U.S. 397 (1976). The District Court in the Southern Ohio Coal Company case denied an injunction on similar grounds.

Appeals were taken in all three cases to the Fourth Circuit, which issued its Opinion on all three cases on July 6, 1977.

The Court below held, in essential effect, that, "Our principal problem is to construe *Buffalo Forge* and apply it to the facts of these cases."

The Court below did so and concluded as follows:

1. That the strike by Local 1759 at Grace Mine No. 3 of Cedar Coal was over an arbitrable grievance, and that the strike "fell squarely" into *Boys Markets* and should have been enjoined. The Court rejected the Union's spurious contention that the original strike

changed its character and became a "political" strike against the Federal Courts.

2. That the strike by Local 1766 at the two other Cedar Coal mines was in furtherance of the goals of the original strike by Local 1759, and also enjoinable.

3. That the strike by Local 1949 at the Martinka Mine of Southern Ohio Coal did not fall within *Boys Markets* and was not enjoinable.

The court below remanded the cases involving Locals 1766 and 1949, with directions to the District Courts to order arbitration of the refusals of these locals to cross picket lines prior to proceeding with the damages aspects of the cases.

The Union has petitioned for review in the Local 1766 and 1949 cases, raising the question of the power of the court below to order arbitration. The Respondents are joining in the Petition but, as we are advised, are seeking a broader ruling on the applicability of *Buffalo Forge.* BCOA, as *amicus curiae,* joins Respondents in respectfully requesting the Court to grant the Writ and to consider the broader issue of the enjoinability of wildcat strikes in the bituminous coal industry under *Boys Markets,* read in context with *Buffalo Forge.*

REASONS FOR GRANTING THE WRIT

BCOA joins in the Petition for a Writ because it strongly urges the Court to review this case and to clarify *Buffalo Forge* as it applies to this recurring type of wildcat strike in the bituminous coal industry. The issue is certainly one of national importance, and there has developed something of a conflict in the Cir-

cuits. An expeditious resolution is imperative in the national interest.

Unlike other unionized industries where wildcat strikes are a rarity, the bituminous coal industry has become increasingly victimized by wildcat strikes arising over arbitrable disputes. This is despite the fact that the national agreement had one of the broadest and most available grievance-arbitration procedures in existence. Every contract dispute and "local trouble" of any kind was subject to grievance-arbitration. Moreover, as already stated, the 1974 Agreement provided for a national Arbitration Review Board to reconcile differences among panel arbitrators, and thus to bring about uniformity as to the meaning and interpretation of the national agreement.

By and large, the UMWA members observed and followed this procedure. But, on occasion, employees at a particular mine spurned these arbitration procedures and resorted to economic force to gain their demands. When this happens, a few recalcitrant men were able to spread the wildcat strike to other locals and to shut down an entire UMWA District, or an entire state, and even the entire bituminous coal industry.

The result has been disastrous. There have been regularly recurring wildcat strikes in the coal industry, and they have been escalating. It is not an overstatement to say that we are nearing industrial anarchy in the coal fields.

The ink was hardly dry on *Buffalo Forge,* which was issued on July 6, 1976, when on July 19, this particular strike broke out, first in West Virginia, over a grievance that was both arbitrable and arbitrated. It then spread rapidly throughout the industry. The local union

and its cohorts in the UMWA did not like the result of the arbitration and, by the use of roving pickets, shut down practically the entire industry for several weeks. The costs to all concerned were enormous and irremediable. Yet, for the most part, District Judges, overreacting to *Buffalo Forge,* refused either to issue or to enforce injunctions.

While this strike eventually came to an end, similarly destructive stoppages took place in 1977, with equally devastating effect, and there can be little doubt that this pattern and practice will continue unless something is done about it.

THE BUFFALO FORGE ISSUE

BCOA does not believe that the Court in *Buffalo Forge* intended to grant to a few willful men a roving license to destroy the bituminous coal industry, the coal miners, their Union, and their Pension and Health Funds, and to endanger the public welfare.

The District Courts and now some of the Circuit Courts have construed *Buffalo Forge* as having the effect of virtually overruling *Boys Markets* as applied to wildcat strikes in the bituminous coal industry. *U.S. Steel* v. *UMWA,* 548 F.2d 67 (3rd Cir. 1976); *Southern Ohio Coal Co.* v. *UMWA,* 551 F.2d at 703 (6th Cir. 1977); *Zeigler Coal Co.* v. *UMW Local 1870, et al.,* No. 76-2113 (7th Cir., Dec. 1, 1977). We do not believe this was the intent of the Court. *Buffalo Forge* reaffirmed the basic thrust of *Boys Markets* which endorses the use of the Federal Courts to uphold the sanctity of the arbitration process.

Buffalo Forge simply holds that where there is no underlying arbitrable dispute which is being under-

mined by a sympathy strike, *Boys Markets* does not apply.

There was no underlying arbitrable dispute in *Buffalo Forge*. In that case, there were two separate local unions representing two separate groups of employees in two separate bargaining units. One had its own separate contract and the other was negotiating one. The dispute over the negotiation of an agreement was not arbitrable, and the union striking in sympathy had no arbitrable dispute over than the sympathy strike itself.

Thus, there was no underlying arbitrable issue of any kind, and the majority held that for this reason the integrity of the arbitration process was not undermined or endangered by the sympathy strike.

Here, the strike started and spread over an arbitrable dispute. Since the original strike at the originating mine was arbitrable, the spread of the strike by roving pickets was designed solely to increase the pressure on the industry to yield. This undermined and threatened the integrity of the arbitration procedure and was, therefore, enjoinable against all participating locals.

The Position of BCOA on *Buffalo Forge*

BCOA respectfully submits that this case is clearly distinguishable from *Buffalo Forge*. Reduced to its bare bones, *Buffalo Forge* held that a "sympathy" strike is not enjoinable because of the proscriptions of Norris-LaGuardia against labor injunctions. *Buffalo Forge* defined a sympathy strike as one where one local union (having an on-going labor agreement and having no direct interest in the underlying dispute) ceases

work in "sympathy" with a sister local engaged in a legal, primary strike against a common employer.

In *Buffalo Forge,* the majority of this Court reasoned that since the "underlying" dispute between the striking local and the employer was not arbitrable, the "sympathy" strike was not "over" an arbitrable issue and, therefore, was not enjoinable under *Boys Markets.*

The mere statement of this ruling, read in context, sharply distinguishes *Buffalo Forge* from the typical wildcat strike in the bituminous coal industry. The question presented here could be put in these terms:

> Whether or not under *Boys Markets* a court which concededly can enjoin strikes over arbitrable grievances at their source, can also enjoin locals at other mines from striking to place increasingly mounting pressure on the particular employer and on the BCOA membership to forego their right to arbitration and to capitulate to the union's grievance?

To consider this question in proper context, it must be determined whether the strikes at other mines of the same and other employers are truly "sympathy" strikes in the meaning of *Buffalo Forge,* or whether they are merely extensions of the original economic pressure to force the employers, individually and collectively, to accept the union's interpretation of the National Agreement.

BCOA submits that this is the key to the entire issue.

Contrary to other Circuit Courts, the Fourth Circuit Court of Appeals showed some real understanding of the unique situation in the bituminous coal industry which is dominated by a single union with a national

agreement containing wages, benefits, terms and conditions of employment common to all companies signatory to that agreement and to all UMWA coal miners. But the court below stopped short of the logic of its own sound reasoning.

First, the court below correctly and without any real challenge held that the original strike by Local 1759 was over an arbitrable issue and indeed was in defiance of an arbitration award. It was, therefore, unquestionably enjoinable under *Boys Markets*.

Second, the Court held that the strike by Local 1766 at two other Cedar Coal mines was in furtherance of Local 1759's unlawful objective, and was also enjoinable. The Court reasoned thusly:

> "Here, the employer is the same as to both Locals; the collective bargaining agreement is the same; the bargaining unit is the same; the locality of employment is the same; and, most importantly, the purpose of 1766's refusal to cross the 1759 picket lines was not to coerce Cedar into conceding an issue to Local 1759 which was not arbitrable; rather, the purpose of the 1766 strike was to coerce Cedar into conceding an issue to Local 1759 which was admittedly arbitrable. We also bear in mind that under the two-tier arbitration provisions of the collective bargaining agreement, Article XXIII, the award in the 1759 case apparently would affect also Local 1766, for there are only three grounds of appeal to the Arbitration Review Board: that the decision of a panel is in conflict on the same issue with other panels; that the decision involves a new question of a substantial contractual issue; and that the panel decision is arbitrary, etc.
>
> We think, then, that since the purpose of the strike of Local 1766 was to compel Cedar to concede an arbitrable issue to Local 1759, with the same employer, the same collective bargaining agreement, the same bargaining unit, and the cause of Local 1759 made its own, that the *Buffalo Forge* exception to *Boys Markets* should not apply, ..." (Decision, pp. 57-58)

Third, however, the Court below refused to apply the same reasoning to the strike of Local 1949 of Southern Ohio Coal, holding instead that the District Court was correct in denying a preliminary injunction.

The reason for the distinction is unclear, and the only significant missing element as to Local 1949 was that its strike involved a different employer.

We submit, however, that where all the other distinguishing features enumerated by the Court below are present, it is immaterial whether the employer being picketed and struck in pursuit of a common cause is the same or a different employer.

The critical factors, in our opinion, are the other ones enumerated by the Court below, and they apply to Local 1949 as well as to Local 1766. They are: the same collective bargaining agreement; the same bargaining unit; the purpose of coercing Cedar Coal (and indeed the entire BCOA membership) into conceding on an arbitrable issue; and the same impact of the resolution of the particular issue on all BCOA members and all UMWA members because of the unitary arbitration system.

In short, whether or not the same Company (or as mentioned by the Court below, the same locality) is involved, all of the local Unions who went on strike were engaged in a transparent conspiracy and an orchestrated, concerted work stoppage designed to force

the industry to capitulate to the Union's interpretation of a specific provision of the 1974 Agreement. Nothing could be more clearly designed to thwart and undermine the arbitration process.

It is not possible to construe the decision of the court below as not intended to limit the use of injunctions to strike activity at another mine or mines of the same *Company*. It may be that the lower court was merely reciting the fact that the three Cedar mines were commonly owned. In other words, given the evidence in the record showing that the members of Local 1766 were striking in support of Local 1759's "grievance", the Court below might have, and in our opinion should have, reached the same result, regardless of the common ownership of the Cedar Coal mines. However, if it was the intent of the court below to have this case turn on the presence or lack of common ownership, the decision is not only illogical, but also ineffectual.

The Arbitration Review Board under the 1974 Agreement has dealt with basic elements of the same issue. In Decision No. 108, issued on October 10, 1977, the Arbitration Review Board stated:

> ". . . we do not believe that a distinction can properly be drawn between the picketing of an employee's own mine and the picketing of other mines, be they mines of the employee's Employer or mines of another Employer. [footnote omitted] . . . . the problem with drawing a distinction between an employee's own mine and other mines is that it would permit Miners, covered by one and the same Agreement, to enter into 'you picket my mine and I'll picket your mine' mutual-aid pacts, as we said in Decision 105."

We submit that the Court below gave too restrictive an application to *Buffalo Forge;* and that in the interests of stability of labor relations in the bituminous coal industry and in the interest of clarifying the rule of law, the Court should grant *certiorari* in this case.

BCOA submits that in this type of case, injunctive relief is clearly appropriate as a legal matter and is essential: (1) to preserve the integrity of the Agreement; (2) to protect the Health and Retirement Funds; (3) to secure an adequate supply of coal; and (4) to prevent chaos in the bituminous coal fields. We further submit that court relief is not prohibited by the *Buffalo Forge* ruling, but is sanctioned by *Boys Markets.*

Boys Markets Provides the Legal Basis for Injunctive Relief and *Buffalo Forge* Does Not Preclude It

The holding of the Supreme Court in *Boys Markets* is well known and, prior to *Buffalo Forge,* was frequently applied to wildcat strikes in the coal fields. *Boys Markets* holds that where there is a labor contract in effect containing a binding grievance and arbitration procedure, there arises an implied agreement not to strike over an arbitrable dispute. In the event such a strike does occur, the federal courts are empowered to enjoin such strikes and to order arbitration of the dispute.

The courts have frequently noted the scope and breadth of the grievance-arbitration clause of the 1974 Agreement. Article XXIII, Section (c) of that Agreement provided for grievance-arbitration of differences arising over matters not specifically mentioned in the Agreement; or local trouble of any kind. This clause was given a very broad scope by this Court in *Gateway Coal Company* v. *UMWA,* 414

U.S. 368 (1974). That case involved a safety issue; and this Court extended *Boys Markets* to an injunction enforcing the implied no-strike clause in the then existing 1971 National Agreement, although the question of arbitrability of a safety grievance was itself a "substantial question of contract interpretation." 414 U.S. at 380-384. See, footnote 14 in Mr. Justice Stevens' opinion in *Buffalo Forge.*

BCOA submits that *Boys Markets* is applicable here. There was admittedly an arbitrable dispute at the original mine. Roving pickets fanned out from there throughout the industry, shutting down other mines, where the local unions in turn went on strike.

When other UMWA local unions such as those of Southern Ohio Coal Company are picketed and then cease work, their actions are plainly designed to aid and abet the cause of the local union at the originating mine, (in this case, Cedar Coal) and to cause the dispute to be settled by economic force and thus to frustrate and undermine the arbitration process. As this Court said in *Buffalo Forge:*

> "The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties."

In giving approval to *Boys Markets* in *Buffalo Forge,* the Court stated further that,

> "Striking over an arbitrable dispute would interfere with and frustrate the arbitral process by which the parties had chosen to settle a dispute. The *quid pro quo* for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery." 96 S.Ct. 3141, 3147 (1976)

It seems quite clear that the force and effect of the actions of the Local 1766 at Cedar Coal and Local 1949 at Southern Ohio Coal were to join hands with the roving pickets emanating from Local 1759 of Cedar Coal in an effort to compel the original employer (Cedar Coal Company) to capitulate to the Union on an arbitrable (and arbitrated) dispute. Therefore, all locals engaging in and joining this concerted effort breached their implied obligation not to strike over an arbitrable dispute, and should have been subject to injunction under *Boys Markets.*

Distinctions from *Buffalo Forge*

The majority of this Court in *Buffalo Forge* pointed out the features of that case which differentiated it from *Boys Markets* and which are applicable here. The Court stated:

> ". . . The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents. *The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain."* [emphasis added]

The situation presented here is wholly distinguishable from *Buffalo Forge.* Overriding all else, the essential difference between *Buffalo Forge* and this case is the one emphasized by this Court in the above quo-

tation. In *Buffalo Forge,* the strike had neither the purpose nor effect of evading an obligation to arbitrate or of depriving the employer of his bargain. In this case, that was the whole purpose of the strike and the accompanying picketing.

The conclusion seems inescapable that all UMWA locals which went on strike in response to roving pickets were direct parties in a concerted effort to gain by force, rather than by submission to arbitration, their interpretation of the National Agreement. Thus, the purpose and effect of the activities of all those locals was to evade the contractual obligation to arbitrate.

Not even superficially can it be said that this was a "sympathy strike" within the meaning of *Buffalo Forge.* This is not a case where one union with a separate agreement in a separate employee bargaining unit respects the picket lines of another union negotiating for a separate agreement in a separate employee unit. In such a case, there is no arbitrable dispute other than the sympathy strike itself. That was the situation in *Buffalo Forge.* The union engaging in the sympathy strike had no *direct* interest in the dispute between the striking union and the employer.

Here, all UMWA locals and their members were parties to the same National Agreement, negotiated between BCOA and UMWA "on behalf of its members". They had a direct unity of interest in any underlying dispute involving the meaning and application of any of the terms of their identical agreement. They stood to gain or lose equally from the arbitration of the issue, and to gain or lose equally from resolution of the issue by engaging in a wildcat strike. This was so because interpretation of the 1974 Agreement was a

matter in which the members of BCOA and UMWA had an identical and direct interest. The arbitrator's ruling at one mine favorable to one grievant could benefit the members at all mines; and an unfavorable ruling could equally be detrimental to them. An enforced settlement by the use of economic force has exactly the same effect.

1. Here the underlying dispute was arbitrable.

The issue at the Grace Mine No. 3 as to whether the job in question was a "classified" (meaning Union) job or a non-classified job turned on the application of a specific provision of the 1974 Agreement which was applicable to all BCOA members and all UMWA members.

This situation is thus essentially different from that in *Buffalo Forge* where, as the Court pointed out, there was *no underlying dispute* "that was even remotely subject to arbitration." Here, every member of BCOA and every member of the UMWA had a direct interest in the resolution of the Cedar Coal dispute which was the "underlying dispute" giving rise to this entire work stoppage.

2. Here the original strike was illegal.

Another distinction is that in *Buffalo Forge* the union originally on strike was engaged in a *legal,* primary strike and primary picketing. Here, the original strike was *illegal* and in violation of the 1974 Agreement. It would be paradoxical to find that the original strike was an enjoinable one, but that the strikes by other locals in aid of the same unlawful objective were lawful and unenjoinable.

3. Here there is a single bargaining unit and agreement.

Moreover, BCOA believes that the application of *Buffalo Forge* must be considered in the context of the collective bargaining relationships which exist in the bituminous coal industry.

In *Buffalo Forge* there were two separate locals representing two separate "bargaining units". One was striking to obtain its own separate agreement. The other struck in sympathy.

By contrast, all bituminous coal miners employed by members of BCOA are members of a ***single multi-employer bargaining unit***. The employers in that bargaining unit are all the members of BCOA. All UMWA miners employed by members of BCOA are covered by a single national agreement containing identical terms and conditions applicable to all of them. The Agreement is a national agreement negotiated between BCOA and the International Union.

The terms of the National Agreement apply alike to all members of UMWA employed by BCOA members; likewise their employers were all mutually bound to respect and to follow the common grievance-arbitration procedures. They also all were bound by Article XXVII, to ". . . maintain the integrity" of the agreement.

Vital to maintaining this "integrity" was the pledge to abide by the grievance-arbitration procedures for settling disputes. As members of the same bargaining unit covered by the same national agreement, each BCOA member and each UMWA member had an obligation to uphold the agreement and a duty not to engage in lockouts, in strikes, or in picketing over any dispute, no matter at what mine or what Company the

dispute arises, so long as that underlying dispute is arbitrable.

If the situation were one in which there were a single plant-wide unit and contract, it would make no sense to say that the employees in Department A who struck over an arbitrable grievance *could be* enjoined under ***Boys Markets,*** but that the employees in Department B who went out in "sympathy" *could not*. Clearly, in such a situation, the entire strike in a single bargaining unit would be enjoinable under ***Boys Markets***.

Conceptually, although on a larger scale, the case just hypothesized is the situation between BCOA and the members of the UMWA under the 1974 Agreement. There is one national contract and one national bargaining unit. The miners at each individual mine of member companies may and do belong to various local unions. They have their own seniority lists and initiate their own grievances. But these locals do not constitute separate bargaining units. Their wages, hours, conditions, benefits, and seniority rights are negotiated between BCOA and UMWA and are derived from the one national agreement. Their grievances are processed under that agreement. Indeed, grievances go in progressive steps from the local to the District level and then to arbitration before panel arbitrators selected by BCOA and UMWA under the National Agreement.

Moreover, in the 1974 Agreement, for the first time, a provision was made for a National Arbitration Review Board which functions as the final arbiter of all disputes. The professed purpose and effect of this National Board was to bring about uniformity in the interpretation and application of the agreement. It is significant that several panel arbitrators and the Arbi-

tration Review Board itself have ruled on the legality of roving pickets under the 1974 Agreement, and have condemned them as violative of the essence of the 1974 Agreement.

Given the existence of a single agreement in a single multi-employer bargaining unit, and an arbitration procedure designed to insure conformity of interpretation, BCOA submits that all members of the Union employed by members of BCOA are mutually bound to abide by the common grievance arbitration procedures. In this unitary relationship, the concepts of "primary" strikes and "sympathy" strikes simply do not apply. These terms connote separateness of unions and bargaining units, and separateness of interests which do not exist here. All coal miners and all members of BCOA have a direct interest in the disputes of all other miners. Because of this close parity of interest in the outcome of any contractual dispute, *Buffalo Forge* is clearly inapposite, and *Boys Markets* should govern.

CONCLUSION

The simply stated principle embodied in the National Bituminous Coal Wage Agreement of 1974 was that *both parties* should "maintain the integrity of the agreement" during its term, recognizing that at periodical intervals there may be legal strikes or lockouts over the terms of a new agreement. A part of this mutual obligation during the contract term was the obligation of both parties to use the grievance-arbitration procedures of the agreement to resolve disputes. This left no room for wildcat strikes and their spreading by roving pickets to force the employer to

adopt the Union's unilateral interpretation of the agreement.

Otherwise, the concept of an agreed period of labor peace under an agreement for a fixed term becomes illusory.

For the above reasons, BCOA supports the Petition for a Writ to consider the issue of the application of *Buffalo Forge* to the situations presented in these cases.

Respectfully submitted

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